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**FOOD SERVICE CONTRACTS
ADMINISTRATIVE POLICY NO. 3
SCHOOL YEAR (SY) 2015-2016**

SUBJECT: Guidance on Oversight and Monitoring Food Service Contracts

DATE: November 23, 2015

Replaces SY 2014-2015 Food Service Administrative Policy #12

Use in Conjunction with Food Distribution SY 2014-2015
Policy#1 on Crediting United States Department of Agriculture
(USDA) Foods

The Michigan Department of Education (MDE) recommends that School Food Authorities (SFAs) review their current Food Service Contract language and the following regulations concerning the procurement of all goods and services with nonprofit school food service account funds, including food service contracts:

- 7 CFR, Subchapter A, Part 210 – National School Lunch Program
Specifically:
 - Part 210.14 – Resource Management
 - Part 210.16 – Food Service Management Companies
 - Part 210.19 – Additional Responsibilities
 - Part 210.21 – Procurement
- 7 CFR, Part 250.51 – Donated Foods in Contracts with Food Service Management Companies (FSMCs)
- 2 CFR Part 200 applicable to Procurement

Monitoring and oversight of *Cost Reimbursable Food Service Management Company contracts* throughout the school year is essential to ensure SFAs receive the full value of purchase discounts and rebates and to ensure they are in compliance with Federal law.

In accordance with Federal program regulations that became effective on November 30, 2007, SFAs must receive the full benefit of any discounts, rebates or other applicable credits from the purchase made under Cost Reimbursable contracts on behalf of the school meals programs.

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Therefore, contractors are required to provide sufficient information to permit the SFA to identify allowable and unallowable costs, as well as the amount of all such discounts, rebates and other applicable credits on invoices presented to SFA for payment [7 CFR 210.21(f)(vi), 220.16(e), and 250.51(b)].

MDE requires this information be reported to SFAs on a monthly basis. Because FSMCs must maintain documentation of costs, discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the SFA, State Agency or USDA, MDE recommends SFAs request this documentation from FSMCs during their monthly invoice reconciliation [7 CFR 210.21 (f)(iv) and (vi)].

For *Fixed Price Food Service Management Company Contracts and Vended Meal Company Contracts* there are no purchase rebates, discounts, or credits that schools receive since the FSMC or Vendor purchases food directly to prepare meals to sell. Since the school does not purchase the food directly, the Contractor is not required to pass that purchase credit, rebate, or discount back to the school. However, under those types of contracts, the Vendor or FSMC must credit the school for the use of USDA Foods.

In order to comply with the requirements set forth under 7 CFR Parts 250.51 (b) and 210.21 (f)(1)(iv), the "USDA Foods" section of the food service contract indicates the SFA retains the right to conduct monthly commodity credit audits throughout the year to ensure and verify proper credit has been received for the full value of all USDA Foods received by the Contractor during the year. For more detailed guidance, refer to Food Distribution Administrative Policy No. 1 for SY 2014-2015.

It should be noted that MDE has the authority to impose pre-issuance review requirements on a School Food Authority's procurement. MDE is mandated to annually review each contract, including all supporting documentation, between an SFA and their FSMC or vendor to ensure regulatory compliance [7 CFR 210.19(a)(6) and 210.21(c)(1)].

As a result, in conjunction with the annual contract renewal process, MDE requires SFAs to attest they directly conduct monthly (or at the very least quarterly) reconciliations of food service contract invoices to verify allowable costs, the accuracy of fees, and the application of proper rebates, discounts, and credits. SFAs may not rely on FSMCs or Vendors to conduct the reconciliation for them. On an annual basis, MDE may request individual SFAs provide their monthly invoice reconciliation documents for verification.

For your convenience, the attached is a USDA Food and Nutrition Service Best Practices Guidance for Monitoring Cost Reimbursable Contracts.

Questions regarding this policy memo may be addressed to Connie Jones, Financial Analyst, at 517-373-3630.



BEST PRACTICES

Introduction

A RESOURCE FOR SCHOOL FOOD AUTHORITIES

Monitoring Cost Reimbursable Contracts for Rebates, Discounts, and Applicable Credits

Federal regulations require School Food Authorities (SFAs) that have cost reimbursable contracts with Food Service Management Companies (FSMCs) receive the full value of any discounts, rebates and applicable credits (credits) that accrue as a result of purchases made by FSMCs for the SFA.

These regulations for cost reimbursable contracts are in place to make the identification of credits more transparent to SFAs and to maximize Federal funds for the service of healthy and nutritious meals to students through the School Meal Programs. These best practices are intended to assist SFAs with meeting this requirement.

Executing the Contract

An important first step in complying with these requirements is to ensure that your contracts include all necessary provisions. **Cost reimbursable contracts** must include the following provisions [7 CFR Part 210.21 (f)(1)(i),(iv),(v),(vi)]:

- ✦ The mandatory return of all credits to the SFA's nonprofit food service account.
- ✦ The frequency and the method FSMCs will use for reporting credits on invoices and billing statements (e.g., monthly, quarterly, annually).
- ✦ All credits must be clearly identified on billing statements and invoices submitted by FSMCs to the SFA.
- ✦ All records of credits must be maintained by FSMCs, and made available to SFAs and State agencies upon request.
- ✦ The reporting of credits by FSMCs is required no less frequently than annually; however, State agencies may approve more frequent reporting. FNS encourages monthly reporting to facilitate SFA monitoring of the credits.

Helpful Tip

SFAs must obtain documentation from the FSMC to allow for the identification of allowable and unallowable costs, and reconciliation of all rebates, discounts and applicable credits.



Monitoring the Contract

The SFA's responsibilities do not end when the contract is signed. Monitoring the contract throughout the year is essential to ensure the SFA receives the full value of credits and is in compliance with Federal regulations. Monitoring activities may include the following best practices:

- ✦ Begin the process of monitoring the contract immediately by identifying the person or persons within the SFA who will be responsible for oversight.
- ✦ Designate the position that will monitor the credits (e.g., school food service director, school business or procurement official or other SFA-designated employee).
- ✦ Examine the invoices and other documentation provided by the FSMC as agreed to in the contract. Remember, it is important to maintain this documentation as support for credits and for review by the State agency.
- ✦ Determine the percentage of credits reported in relation to the value of food purchased early in the contract year as a benchmark for future comparison.
- ✦ Calculate the average credit-purchase proportion received (see example on the left). The industry average is between 10 to 15 percent.
- ✦ Examine products to ensure that to the maximum extent practicable, domestic commodities are purchased. Visit storage facilities (freezers, refrigerators, and dry storage) to observe the origin of purchased food printed on food labels and case units.

Helpful Tip

**Credit-Purchase
Proportion equals**

**Value of Credit Reported
divided by
Value of Purchased Food**

$$CPP = VCR \div VPF$$

Questioning Discrepancies

If you notice potential discrepancies during monitoring activities, follow up with the FSMC to resolve the issues. If necessary, request additional documentation from the FSMC to substantiate these discrepancies. Potential discrepancies to consider may include:

- ✦ Frequency of reporting that does not agree with contract provision.
- ✦ Labels identifying countries other than the U.S. may serve as a red flag that the FSMC is not complying with contractual provisions regarding "Buy American", possibly resulting in lower credits.
- ✦ Credit-purchase proportions that fall below the average credit-purchase proportion established early in the year.

Additional Resources

**Policy Memorandum
SP-23-2013**

**USDA State Agency Guidance to
Procurement Web-Based
training:**

<http://nfsmi.org/Templates/TemplateDefault.aspx?qs=cEIEPTIzOA>

**Contact your State agency for
additional assistance and
support.**